

REMARKS

This Amendment is responsive to the Office Action mailed December 30, 2008. At the time of the Office Action, claims 37, 39-62 and 66-68 were pending, with claim 52 having been withdrawn from consideration.

With this Amendment, claims 37 and 66-68 have been amended. Support for the amended claims is found in the originally filed application, particularly at locations identified hereinafter. Accordingly, no new matter has been added.

35 U.S.C. § 102 Rejection

Claims 37, 39-51 and 53-62 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Eggers et al., U.S. Patent No. 6,032,674.

Without acquiescing to the properness of the rejection against the claims, Applicant has elected to amend independent claim 37 to expedite prosecution and further distinguish from the art, thus rendering any further discussion of the rejection against the claims moot. However, Applicant will address the cited art in relation to the amended claim.

Applicant has amended independent claim 37 to include, among other features, “a dimensional change sensor configured to grasp the tissue and move relative to the dimensional change of the tissue while having a grasp of the tissue.” Support may be found, for example, in the specification at page 10, lines 1-17.

As the Applicant understands Eggers et al., an ultrasonic transducer determines the thickness of the heart wall by measuring the delay time for reflected ultrasound signal to return from the boundary of the heart wall at the surface of epicardium. The delay time is then translated into a thickness of the heart wall. (Col. 23, l. 19-28). From the Applicant's understanding of Eggers et al., the ultrasonic transducer does not grasp the tissue or move relative to the dimensional change of the tissue while having a grasp of the tissue.

At least in view of the foregoing remarks, it is respectfully submitted that claims 37, 39-51 and 53-62 are not anticipated by Eggers et al., and the conditions of patentability have been

satisfied. Reconsideration and allowance of independent claim 37, as well as claims 39-51 and 53-62 which depend directly or ultimately therefrom, is respectfully requested.

**35 U.S.C. § 103 Rejection**

Claims 66-68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mulier et al., U.S. Patent No. 6,096,037, in view of Huitema et al., U.S. Patent No. 5,562,702, and further in view of Eggers et al.

Again, without acquiescing to the properness of the rejection against the claims, Applicant has elected to amend independent claims 66-68 to expedite prosecution and further distinguish from the art, thus rendering any further discussion of the rejection against the claims moot. However, Applicant will address the cited art in relation to the amended claims.

Similar to claim 37, Applicant has amended claims 66-68 to include, among other features, “a dimensional change sensor configured to grasp the tissue and move relative to the dimensional change of the tissue while having a grasp of the tissue.”

As indicated in the Office Action, Mulier et al. fail to specifically disclose a dimensional change sensor for measuring tissue thickness, and Huitema et al., while teaching a sensor in a forceps jaw for measuring tissue thickness, fails to specifically disclose the type and placement of the thickness measuring sensor. Consequently, to raise the rejection, the Office Action combines the sensor of Eggers et al. with Mulier et al. and Huitema et al. as an obvious design consideration.

However, as indicated, *supra*, based on the Applicant’s understanding of Eggers et al., the ultrasonic transducer does not grasp the tissue or move relative to the dimensional change of the tissue while having a grasp of the tissue. Applicant believes that such a feature would be non-obvious in light of Eggers et al., particularly as Eggers et al. is applied to a beating heart where grasping the tissue appears undesirable. Furthermore, unlike the Applicant’s invention, Eggers et al. does not appear to have the ability to provide the feature of the ultrasonic sensor itself being able to provide a measure of dimensional change without the aid of a sensing system.

Applicant's invention, on the other hand, does not require a sensing system to provide a measurement of dimensional change.

At least in view of the foregoing remarks, it is respectfully submitted that claims 66-68 are patentable over the cited art, and the conditions of patentability have been satisfied. Reconsideration and allowance of independent claims 66-68 is respectfully requested.

**Summary**

The Applicant respectfully submits that, in light of the foregoing amendments and remarks, and having dealt with all the rejections raised by the Examiner, the claims are in order for allowance. Thus, early allowance is earnestly solicited.

The Examiner is invited to contact the undersigned representative if it will facilitate prosecution of this application.

In the event there are any additional fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

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